

INVERNESS MINING CO.

IBLA 83-38

Decided May 23, 1984

Appeal from decision of the Eastern States Office, Bureau of Land Management, denying extension of phosphate prospecting permit ES 16149.

Affirmed.

1. Mineral Lands: Prospecting Permits -- Phosphate Leases and Permits:
Permits

Extension of a prospecting permit may be properly denied where application is not timely filed and no showings are made, as required by 43 CFR 3511.3-2, as to the reasons why additional time is needed to complete prospecting work.

APPEARANCES: A. C. Reed, manager, Inverness Mining Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Inverness Mining Company appeals from a decision dated September 1, 1982, of the Eastern States Office, Bureau of Land Management (BLM), denying a request for a 2-year extension of phosphate prospecting permit ES 16149. The permit was originally issued to Allied Chemical Corporation (Allied) on November 1, 1979, for a period of 2 years. Appellant received the permit by assignment from Allied. BLM approved the assignment effective April 1, 1981. On July 17, 1981, appellant submitted a Prospecting Application and Permit form seeking to "re-apply for a prospecting permit on property presently held under file number ES 16149." Attached to the letter of explanation is a completed form 3510-1 (November 1970) Prospecting Application and Permit for the same lands as were embraced in the original application by Allied.

On August 3, 1982, BLM asked Minerals Management Service (MMS) and the United States Forest Service whether either objected to "the requested extension." MMS replied on August 23, objecting because permittee had not drilled at least one adequate test hole or performed comparable prospecting during the initial term of the permit. The Forest Service filed a reply on August 26, 1982, stating it had no objection to extension of the permit.

Although the application was not characterized as an extension of an existing permit, the lands described in the application were subject to an existing permit to appellant and BLM treated appellant's letter of July 17, 1981, as a request for extension of ES 16149 and denied the request for failure to comply with 43 CFR 3511.3-1(b) (1982) which provides:

A permit may be extended, in the discretion of the Secretary and after consultation with the Mining Supervisor of the Geological Survey, if:

(1) The permittee has been unable with reasonable diligence to determine the existence or workability of the deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such extension.

(2) The permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit. This requirement may be waived upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting.

(3) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

In its statement of reasons on appeal appellant also treats the application as a request for an extension and asserts that shortages of equipment and manpower beyond its control prevented the accomplishment of work under permit ES 16149.

[1] Appellant's application does not fulfill any of the requirements of 43 CFR 3511.3-2, quoted supra. Not until it filed a statement of reasons on appeal did appellant explain why it failed to earlier conduct prospecting activities although by regulation it was required to explain this circumstance at the time of filing its application if it was seeking to extend the existing permit. The application made by appellant on July 17, 1981, contained none of the "showing" required of extension applications by the regulation. It did not, for example, disclose the reasons additional time was needed (43 CFR 3511.3-2(b)(1)); it did not enclose copies of correspondence showing unsuccessful attempts to obtain labor or materials (43 CFR 3511.3-2(b)(2)); it did not explain the circumstances which prevented prospecting within the original term (43 CFR 3511.3-2(b)(3)); and it did not show how much additional time was needed to do the work (43 CFR 3511.3-2(b)(4)). Since appellant's application was not described as an application for extension and did not conform to any of the regulatory requirements for extensions of existing permits, it seems quite possible it was not intended by appellant to be so considered by BLM. Under the circumstances, however, BLM was not required to ignore the fact of the existing permit and, the fact that appellant referred to the existence of permit ES 16149 explains BLM's subsequent treatment of the application in this case. Clearly, considered as an application for extension of an existing term, the application was defective. Just as certainly, part of the explanation of failure to complete work during the initial term was the fact that appellant

did not receive assignment of the permit in this case until April 1981, approximately 6 months prior to the date the permit was to expire. Appellant, however, has not claimed that this circumstance, or any other happening was a factor in its failure to begin timely exploration. The clear thrust of the Departmental regulation is to require that an applicant for an extension to a currently valid prospecting permit must justify a request for more time to prospect. See 43 CFR Subpart 3511. While the applicable provision of the Mineral Leasing Act which is implemented by these regulations, 30 U.S.C. § 211(c) (1982) provides for extensions of time for miners to prospect for phosphate, the burden to show that more time is needed is placed upon the prospector. In this case, BLM found there had not been a sufficient justification to support further extension of the permit to allow for exploration by appellant. 1/ Since appellant totally failed to offer any explanation or support for its conclusory assertion that its failure to explore was the result of circumstances beyond its control, BLM properly refused to extend or renew the sought-after permit.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge

1/ In Frank Ware, A-30233 (Feb. 18, 1965), the legislative history of 30 U.S.C. § 211(c) (1982) is analyzed. As this decision by Under Secretary Carver points out, although phosphate prospecting is sought by the Act to be encouraged, whether to extend any existing permit to prospect is a matter left to the discretion of the Secretary. The Secretary has now promulgated 43 CFR Subpart 3511 to regulate this activity. Under the regulation, there must be an affirmative showing made of diligence and planned intent to actively pursue prospecting activity in order to support an application for a permit by one who has an existing permit to prospect. 43 CFR 3511.3-2(b).

